Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 0000-123711 08/02/2016

HON. ROSA MROZ

CLERK OF THE COURT
J. Matlack
Deputy

STATE OF ARIZONA

v.

STEVEN C JAMES (B)

SUSIE CHARBEL

ROBERT L STORRS
GARY T LOWENTHAL

CAPITAL CASE MANAGER

**RULING**

The Court has considered the Defendant's Motion in Limine to Limit Information the Jury May Consider regarding Parole Eligibility under Life Sentence, the State's Response, and the Defendant's Reply. The Court does not need oral argument to decide this issue.

The three co-defendants "severely beat [Juan] Maya, drove him to an isolated desert area, killed him by shooting him and striking him with rocks, and threw his body down an abandoned mine shaft" and were convicted in separate proceedings. *James v. Ryan*, 733 F.3d 911, 912 (9th Cir. 2013). The murder of Juan Maya occurred in 1981 and resentencing, pursuant to the Ninth Circuit's 2013 remand, will occur well over thirty years after the guilt phase verdicts and imposition of sentence.

At the time of Defendant's trial in 1982, the only permissible sentences for first degree murder were "death" and "life imprisonment" (A.R.S. § 13-1105(C)); a second statute provided for parole eligibility after 25 years for a sentence of "life imprisonment." At the time, Arizona law provided for judge-sentencing. According to the defense, during *voir dire*, the potential jurors were questioned by the court about their opinions on the death penalty but were not instructed about the meaning of "life imprisonment" or the possibility of parole.

Since the Defendant was sentenced in 1982, the legislature has revised the capital sentencing statute. The statute currently provides for a third sentencing option, "natural life" (A.R.S. § 13-752(H), and also provides that a jury rather than the judge determines life or death. A.R.S. § 13-752(A); *Ring v. Arizona*, 536 U.S. 584 (2002). The State agrees that the Defendant "will be sentenced by a jury according to the options available to the court in 1981, the only options being either the death penalty or a life sentence with the possibility of parole after 25 years."

By the time of the resentencing, the Defendant will have been incarcerated for over 35 years. The Defendant argues that if the Court instructs the jury that "life imprisonment" means parole eligibility after 25 years, the jury may infer that a life verdict will result in the Defendant's immediate parole eligibility, and that this will pre-dispose some jurors toward a death sentence, regardless of whether the Defendant deserves the death penalty. The Defendant requests that "this Court (1) instruct the jury that it must decide between death and life imprisonment without further defining life imprisonment; (2) be prepared with an appropriate instruction should the jury seek information relating to parole eligibility; and (3) order "both parties to refrain from referring to parole eligibility in the presence of the jury."

The State claims that the Court must instruct the jury "that the defendant has already spent close to 35 years in prison and that he may be eligible for parole by the time his penalty phase is complete."

This issue has not been previously addressed by the Arizona appellate courts. The Court finds persuasive the New Jersey Supreme Court's rationale in *State v. White*, 27 N.J. 158, 142 A.2d 65 (1958):

The Legislature committed to the jury the responsibility to determine in the first instance whether the punishment should be life or death. It charged another agency with the responsibility of deciding how a life sentence shall be executed. The jurors perform their task completely when they decide the matter assigned to them upon the evidence before them. What happens thereafter is no concern of theirs. It is no more proper for a jury to conclude that death be the penalty because a … defendant may be paroled, then it would be for a trial judge in other criminal causes deliberately imposing an excessive sentence to frustrate the statutory scheme committing parole to another agency.

*Id.* at 76.

The Court finds that reference to Defendant's eligibility for parole, coupled with the number of years served, would likely sway some jurors to impose the death penalty because the Defendant is already eligible for parole. Whether the Defendant is already eligible for parole is

not relevant to the jury's decision on whether to impose the death penalty. The Court further finds that even if it is relevant, the probative value of the evidence is substantially outweighed by its prejudicial effect and confusion of the issues. The Court is particularly concerned that allowing such evidence may result in the introduction of evidence on the workings of the Arizona Board of Executive Clemency and its decision-making process, as well as Arizona's sentencing schemes, which will be necessary to address the jurors' possible concern that the Defendant will be let out of prison immediately if the jurors voted for a life sentence.

IT IS ORDERED granting the Defendant's request for the Court to not instruct the jury that a life sentence includes parole eligibility after twenty-five years in prison.

The Defendant also requests that this Court be prepared with an appropriate instruction if the jury itself seeks information relating to parole eligibility. If (1) during *voir dire* a prospective juror [himself] asks for information on whether life imprisonment includes eligibility for release; or (2) during jury deliberations, the jury asks for similar information, Defendant suggests the following instruction:

If the defendant is sentenced to life imprisonment, the law allows him to apply to the Arizona Board of Executive clemency for release on parole. The Arizona Board of Executive clemency is required to follow its own rules in determining eligibility for parole, and that process is *not* a proper matter for you to consider in determining the defendant's punishment. The question of parole eligibility should be eliminated entirely from your consideration, and dismissed from your mind(s). In determining between death and life imprisonment, you should determine the question as if life imprisonment means exactly what the statute says, imprisonment in the State's prison for life. You should decide the question of punishment according to the evidence presented to you in court, wholly uninfluenced by speculation about what another arm of government might, or might not, do in the future.

The Court finds that the language that it has stricken from the Defendant's requested instruction is an inaccurate statement because it suggests that life in prison means that the Defendant will be in prison for life. Although under Arizona law that may be accurate, the language ignores the fact that the sentencing options available at the time of the murder including life with the possibility of parole after 25 years.

The Court will give the above instruction, as modified by excluding the stricken language, if the jury asks questions about parole.

The Defendant also requests that the Court order "both parties to refrain from referring to parole eligibility in the presence of the jury."

The Defendant acknowledged that case law permit prosecutors to argue to the jury that the defendant could be paroled and kill again, if sentenced to life. *Sullivan v. State*, 47 Ariz. 224, 55 P.2d 312, 318 (1936) ("the probability of a defendant, whose punishment has been fixed by a jury at life imprisonment, actually having to serve the penalty so fixed, is one of the questions which it is highly proper for a jury to consider in the exercise of its discretion,…").

Given the findings made by the Court, and the rulings above, the Court finds that it would be inappropriate for either party to refer to parole eligibility in the jury's presence.

The Court is aware that a trial is a fluid proceeding, and that testimony or evidence may render otherwise inadmissible evidence or testimony relevant. If either party believes that the door has been opened to otherwise inadmissible testimony, the parties are instructed to request to approach the bench and request further instruction.

**IT IS ORDERED** granting the Defendant's Motion in Limine to Limit Information the Jury May Consider regarding Parole Eligibility under Life Sentence.